

## Message Text

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C O N F I D E N T I A L LA PAZ 8931

EXDIS

E.O. 11652: GDS

TAGS: CASC, BL

SUBJECT: AMERICAN PRISONERS: GOB CONSIDERATION OF IMPROVEMENTS  
IN DUE PROCESS AND LEGAL SAFEGUARDS

REF: (A) LA PAZ 8821, (B) LA PAZ 8859, (C) LA PAZ 8908

1. DURING THE CONVERSATION WITH INTERIOR MINISTER PEREDA REPORTED REF A WE RAISED A NUMBER OF POSSIBLE CHANGES IN THE NARCOTICS LAW WHICH WOULD EITHER IMPROVE THE DUE PROCESS AND LEGAL SAFEGUARDS PROVIDED FOR PERSONS ARRESTED UNDER THE LAW'S PROVISIONS OR OTHERWISE BETTER ADAPT THE PUNISHMENT IN THE LAW TO FIT THE SEVERITY OF THE CRIME. AMONG THE CHANGES WE SUGGESTED BE CONSIDERED WERE:

A. THE APPLICATION OF SOME OF THE PROCEDURAL AND DUE PROCESS SAFEGUARDS CONTAINED IN THE REGULAR BOLIVIAN PENAL CODE TO THE NARCOTICS CODE. AT PRESENT, CERTAIN SECTIONS OF THE NARCOTICS LAW SPECIFICALLY OMIT OR NULLIFY MANY OF THESE PROVISIONS IN NARCOTICS CASES;

B. EFFORTS IN THE LAW AND LAW ENFORCEMENT TO DRAW A BETTER DISTINCTION BETWEEN NARCOTICS TRAFFICKERS AND PERSONS CAUGHT WITH SMALL AMOUNTS FOR PERSONAL CONSUMPTION;

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C. BAIL FOR THOSE ARRESTED WITH SMALL AMOUNTS FOR PERSONAL CONSUMPTION;

D. REDUCTION OF SENTENCES FOR NON-TRAFFICKERS TO LEVELS COMMENSURATE WITH THE REST OF THE BOLIVIAN PENAL CODE.

2. AT THE URGING OF SECRETARY GENERAL OF THE PRESIDENCY

JAVIER ARCE, THE MINISTER SOMEWHAT RELUCTANTLY ACKNOWLEDGED THAT PERHAPS THE PROVISIONS OF THE NARCOTICS LAW WERE UNDULY HARSH AND HE ORDERED SUB-SECRETARY OF JUSTICE BALLIVIAN TO ESTABLISH A COMMISSION TO STUDY CHANGES IN THE LAWS.

3. DURING THE MEETING HELD NOVEMBER 2 WITH A BOLIVIAN WORKING GROUP PREPARING FOR AN EXCHANGE OF PRISONER'S TREATY, THERE WAS ALSO CONSIDERABLE DISCUSSIONS OF THESE POINTS. SOME MEMBERS OF THIS WORKING GROUP MAY ALSO BE MEMBERS OF THE COMMISSION WHICH WILL CONSIDER LEGAL CHANGES, AND IT WAS AGREED IN ANY EVENT THAT THE TWO GROUPS SHOULD CLOSELY COORDINATE THEIR ACTIVITIES. THEREFORE THEIR COMMENTS ON THE PROPOSED LEGAL CHANGES, ESPECIALLY THE COMMENTS OF THE LA PAZ DISTRICT SUPERIOR COURT VICE-PRESIDENT LOAYZA, ARE MOST RELEVANT TO PROSPECTS FOR ACHIEVING BENEFICIAL LEGAL CHANGES AND GO LIKE THIS:

A. USE OF A SPECIAL LEGAL REGIMEN FOR NARCOTICS WHICH VARIES SIGNIFICANTLY FROM THE PENAL CODE AND THE CODE OF CRIMINAL PROCEDURE HAS PROVED TO BE AN UNWISE DEPARTURE FROM NORMALLY ACCEPTED BOLIVIAN STANDARDS AND PROCEDURES IN THE ADMINISTRATION OF CRIMINAL JUSTICE.

B. THE VERY HEAVY PENALTIES UNDER THE DRUG LAW ARE DISPROPORTIONATE TO THE GRAVITY OF THE OFFENSES, ESPECIALLY IN RELATION TO THE LESSER PENALTIES PROVIDED FOR ALMOST ALL

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OTHER KINDS OF CRIMES IN THE REGULAR PENAL CODE. UNLIKE THE PENAL CODE, THE SPECIAL DRUG LAW INTENTIONALLY DOES NOT PROVIDE FOR A SERIES OF DESCENDING DEGREES OF CULPABILITY WITHIN A GIVEN CHARGED OFFENSE. JUDGE LOAYZA STATED THAT NEVERTHELESS JUDGES ARE USING THE REGULAR PENAL CODE SCHEME IN SENTENCING IN ORDER TO MITIGATE WHAT THEY VIEW AS UNDULY LONG PRISON SENTENCES REQUIRED BY THE DRUG LAW.

C. DEFENDANTS IN DRUG LAW CASES SHOULD BE AFFORDED THE SAME PROCEDURAL RIGHTS AS DEFENDANTS IN OTHER CRIMINAL CASES. SOME OF THESE PROCEDURAL RIGHTS ARE NOT ALLOWED WHEN CHARGES ARE UNDER DRUG LAW. FOR EXAMPLE, RIGHT TO RELEASE ON BAIL SHOULD BE ALLOWED IN MANY CASES WHEREAS THE CURRENT LAW PROHIBITS RELEASE ON BAIL FOR PERSONS CHARGED WITH ANY OFFENSE UNDER THE DRUG LAW. CERTAIN EARLY CHALLENGES TO THE SUFFICIENCY OF A CHARGE ARE NOT ADMISSABLE IN DRUG LAW CASES, BUT IT WAS FELT THEY SHOULD BE ADMISSABLE.

D. THE COMMISSION SHOULD CONSIDER REINTEGRATING THE PENAL PORTION OF THE DRUG LAW INTO THE GENERAL SCHEME OF THE REGULAR PENAL CODE ON THE GROUNDS THAT THE CURRENT DRUG LAW IS NEITHER HIGHLY EFFECTIVE NOR CONSISTENT WITH

BOLIVIAN JURISPRUDENCE.

E. THE DRUG LAW SHOULD NOT ATTEMPT AN INDISCRIMINATE APPROACH TO ALL OFFENSES, BUT RATHER SHOULD MAKE CLEAR DISTINCTIONS BETWEEN WHAT ARE GREATER AND LESSER DRUG LAW OFFENSES, WITH LESSER OFFENSES SUBJECT TO MUCH LOWER PENALTIES THAN NOW EXIST.

4. EMBASSY COMMENT: WE REGARD ESTABLISHMENT OF THE COMMISSION AND THE FAVORABLE VIEWS TOWARD CHANGE BEING EXPRESSED, ESPECIALLY BY JUDGE LOAYZA, AS A VERY POSITIVE STEP TOWARDS AVOIDING MANY OF THE PROBLEMS WITH FUTURE US CITIZEN ARRESTEES THAT WE HAVE HAD UNDER THE CURRENT CIRCUMSTANCES. OBVIOUSLY, BRINGING ABOUT THESE CHANGES WILL TAKE TIME, AND OF COURSE  
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EVEN IF ADOPTED WE WILL STILL HAVE TO FACE AN ANTIQUATED JUDICIAL SYSTEM WHICH MOVES AT SNAILS PACE. BUT WE INTEND TO PUSH FORWARD ON THIS TRACK AS RAPIDLY AS POSSIBLE, AND THE GOB APPEARS PREPARED TO DO THE SAME. AS INDICATED PREVIOUSLY, WE URGE THAT DEPARTMENT OFFICIALS REFRAIN FROM ADVISING INTERESTED PARTIES OF SPECIFIC CHANGES IN BOLIVIAN LAW UNDER DISCUSSION UNTIL WE HAVE CLEARER VIEW OF WHAT CAN BE DELIVERED.  
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